REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application.[1] In an effort to reduce the issues for appeal, Applicant has canceled claims 1 to 10. Therefore, claims 11-20 are pending.

Applicant thanks Examiners Kuen Lu and Daniel Kuddus for conducting a telephone interview on October 6, 2009 in the subject patent application. Applicant requested the interview to clarify specific issues so as to lead to a mutual understanding between the Examiner and Applicant's representative in order to advance the prosecution of the subject Application. MPEP § 713.01(III). In particular, Applicant requested clarification as to how the Examiner interpreted *Ludwig* to anticipate each feature of the claimed subject matter. During the interview, Examiner Kuddus referred to the citations provided in the Final Rejection dated July 9, 2009, but did not elucidate further. As such, Applicant remains uncertain about the support for the assertion of anticipation and, as set forth below, reiterates its request for further clarification.

I.   Objection

Claims 1 to 7 and 11 to 17 were objected to because claims 1 and 11, which recite "[A] method of backing up", should allegedly read "A computer implemented method of backing up".

Applicant notes that the objection to claims 1 to 7 is moot in view of the cancellation of the claims.

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[1] The Office Action contains statements characterizing the claims and related art. Regardless of whether any such statements are specifically addressed herein, Applicant's silence as to these characterizations does not constitute acceptance of them.

Applicant respectfully submits that claims 11 to 17 are clear in their meaning. The body of claim 11 explicitly identifies the functions that are performed by the mobile communication device in carrying out the backup procedure. It is respectfully submitted that the insertion of "computer implemented" in the preamble of the claim is neither necessary to an understanding of the claimed subject matter, nor appropriate. Consequently, Applicant respectfully requests that the objection to claims 11 to 17 be withdrawn.

Claims 11 to 17 were objected to under 37 CFR 1.75 as allegedly being a substantial duplicate of claims 1 to 7. Applicant disagrees with the objection. However, in an effort to reduce further prosecution delays, Applicant has cancelled claims 1 to 7 rendering the claim objection moot. Accordingly, Applicant respectfully requests that the objection to claims 11 to 17 be withdrawn.

II.   Claim Rejections - 35 U.S.C. § 101

Claim 18 was rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory matter. Applicant respectfully requests that the rejection of claim 18 under 35 U.S.C. § 101 be withdrawn for the reasons set forth below.

The Office Action alleges that claim 18 is directed to non-statutory subject matter because "'a server' and a 'means for' are being recited, without having any hardware component." (Office Action, page 8). It is not apparent how this allegation relates to the requirements of 35 U.S.C. § 101. In any event, Applicant respectfully directs the Examiner's attention to at least page 5, lines 12-30 of Applicant's specification. One having ordinary skill in the art could readily ascertain that a network server is a hardware component. Moreover, Applicant respectfully submits

that the server must have at least a computer readable storage medium in order to backup personal data to the network and to store a "backup application." As such, the "means" is implemented by the server when it is executing the backup application. Applicant respectfully submits that claim 18 complies with 35 U.S.C. § 101 and requests that the rejection of claims 11 to 17 be withdrawn.

III.   Claim Rejections - 35 U.S.C. § 102

Claims 1, 8 to 11 and 18 to 20 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Ludwig et al. (U.S. Patent Publication No. 2004/0107254 A1), hereinafter *Ludwig*.

Applicant notes that the rejection of claims 1 and 8 to 10 are moot in view of the cancellation of the claims.

Applicant respectfully submits that *Ludwig* cannot support a rejection of claim 11 under 35 U.S.C. § 102(e) because the reference does not disclose every claim feature. (*See* MPEP § 2131).

FIGs. 1-4 illustrate exemplary embodiments of Applicant's claim 11. The figures illustrate methods of backing up personal data of a wireless communication network subscriber, the personal data being memorised within a mobile communication device and backed up within a network server. The method includes an asynchronous backup mode. The mobile communication device prepares a first subset of data from among a batch of data to be backed up. The first subset of data is transmitted to the server, to be backed up. *See* Figure 2, step 21. The backup is delayed by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device. *See* Figure 2, step 22. The

backup of at least one subset of data subsequent to the first subset of data is resumed at the end of the predetermined time. *See,* Figure 2, step 26.

Claim 11 recites various distinguishing features of the above-described exemplary embodiment. In particular, claim 11 recites:

> wherein said method includes an asynchronous backup mode in which, once the mobile communication device has prepared a first subset of data from among a batch of data to be backed up and transmitted the first subset of data to a network server for backing up, the backup is delayed by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device, and the backup of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time.

Applicant respectfully asserts that *Ludwig* lacks disclosing or suggesting at least the above-noted features of claim 11, for at least the following reasons.

Ludwig teaches a method of real-time communication between a plurality of users each with a communication device having an associated display, and allowing the users to collaborate and share information to replicate the benefits of face-to-face collaboration. (*Ludwig,* Abstract and paragraphs 41 and 42).

Turning to claim 11, The Office Action alleges *Ludwig* discloses transmitting the first subset of data to a network server for backing up, the backup is delayed by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device, and the backup of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time as similarly recited in claim 11. (Office Action, page 10 citing *Ludwig,* at paragraphs 150, 156, 186 and 249). The Office Action appears to equate adding subsequent participants to real-time communication as at least one subset of data subsequent to a first subset of data.

Moreover, the Office Action appears to purport that the period of time between the start of a real-time communication, such as a conference call, and the adding of subsequent participants is the "predetermined period of time" as recited in claim 11. Contrary to claim 11, the time between the initiation of the conference call and the addition of subsequent participants by selecting the new party's face icon and clicking the add button is a completely arbitrary time. (*Ludwig*, paragraph 156). Conversely, in Applicant's claim 11, the backup of subsequent subsets of data is delayed by a "predetermined period of time." The waiting time between backing up subsets of data is predetermined, *i.e.,* a fixed length of time. For example, in Applicant's FIG. 1, blocks 1-3 of 10 are backed up to server 2, a predetermined period of time elapses and blocks 4-6 of 10 are backed up to the server, another predetermined period of time elapses and finally blocks 7-10 of 10 are backed up to the server, ending the backup process. Consequently, *Ludwig* cannot anticipate at least the above noted feature of claim 11.

Although *Ludwig* discloses buttons/menu items can be used to place the remote participant on hold, to resume a call on hold, or to add one or more participants to the call, this has nothing to do with the claim feature "back[ing up] of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time," as recited in claim 11. Accordingly, since *Ludwig* does not disclose the above-identified features of claim 11, *Ludwig* cannot support a rejection of claim 11 under 35 U.S.C. §102(e).

If *Ludwig* is relied on in any subsequent Office Action to reject claim 11, Applicant respectfully requests that the Examiner clarify his interpretation of *Ludwig* and explain how *Ludwig* is believed to teach the above-noted features of Applicant's

claim 11. In particular, the Examiner is requested to specifically identify (a) the feature of Ludwig that is considered to constitute a <u>predetermined</u> period of time, and (b) where the reference teaches that the backing up of data is suspended for such a period of time, and then resumes at the end of the period.

The Office Action rejects claims 18 and 19 for "the same reason[s]" as applied to claim 11. (Office Action, page 10). Applicant respectfully asserts that claims 18 and 19 are allowable for similar reasons that claim 11 is allowable.

Applicant asserts claim 18 is additionally allowable because *Ludwig* does not disclose, teach or suggest at least "means for backing up data…according to an asynchronous mode" as recited in claim 18.

Additionally, Applicant asserts claim 19 is allowable because *Ludwig* does not disclose, teach or suggest "means for backing up data…to…delay by a predetermined period of time the backup of at least one subset of data that is subsequent to the first subset of data" as recited in claim 19. Claim 20 is also allowable at least due to its dependence from claim 19.

For the reasons discussed above, Applicant respectfully requests that the rejection of claims 11 and 18 to 20 be withdrawn, and the claims allowed.

IV.   Claim Rejections - 35 U.S.C. § 103

Claims 2 to 7 and 12 to 17 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Ludwig et al.* (U.S. Patent Publication No. 2004/0107254 A1) and further in view of *Van Reenen, Ian, Carel et al.* (WO 03/037015 A1), hereinafter *Van*.

Applicant notes that the rejection of claims 2 to 7 are moot in view of the cancellation of the claims.

Applicant respectfully submits *Ludwig* and *Van* cannot support a rejection of claims 12 to 17 under 35 U.S.C. §103(a) because, taken individually or in combination, these references lack disclosing, teaching, or suggesting each claim feature recited in independent claim 11. (*See KSR International Co. v. Teleflex Inc.*, 550 U.S., No. 04-1350 (U.S., April 30, 2007), 82 USPQ2d 1385, 1395 (2007); MPEP § 2143.02).

Each of claims 12 to 17 depend directly or indirectly from claim 11 and, thus, includes all the corresponding features recited in claim 11. As set forth above, *Ludwig* does not teach any of the features recited in claim 11. Thus, *Ludwig* also cannot be considered to disclose or suggest the same features included in claims 12 to 17. Moreover, *Van* says nothing with regard to these claim features and the Office Action does not rely on *Van* for any such disclosure or suggestion.

Because neither of the applied references discloses or suggests, at least, the above noted features of claim 11, *Ludwig* and *Van*, when taken individually or in any combination, cannot support a prima facie case for rejecting claims 12 to 17 under 35 U.S.C. §103(a). Claims 12 to 17 are therefore allowable over *Ludwig* in view of *Van*.

V.   Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Accordingly, a favorable examination and consideration of the instant application are respectfully requested.

If, after reviewing this Amendment, the Examiner believes there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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